IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.142 OF 2005

PIMPRI CHINCHWAD NEW TOWN)
DEVELOPMENT AUTHORITY,)
Nigadi, Pune - 411 044.)...Petitioner.

V/s

1. THE STATE OF MAHARASHTRA)

2. HONOURABLE MINISTER OF)
STATE FOR REVENUE, Government of)
Maharashtra, Mantralaya,)
Mumbai - 400 032.)
)

3. THE COMMISSIONER,)
(Revenue))
Pune Division Pune.)
)

4. THE COLLECTOR, PUNE)
)

5. Special Land Acquisition)
Officer No.23, New Administra-)
-tive Building Opp. Council)
Hall, Pune 411 011)
)

6. Secretary, Urban Development)
Department, Mantralaya, Mumbai)
)

7. INDIRA GANDHI CO-OPERATIVE)
HOUSING SOCIETY LTD.,)
C/o. Chairman Shri Dinkar K.)
Kumbhar, 126, 2, Chintamani)
Co-operative Housing Society)
Ltd. Mohananagar Chinchwad, Pune)..Respondents.

Mr Vinod Jadhav i/b Mr. Vijay Patil for the petitioner.

Mr. V.S. Gokhale for respondent Nos. 1 to 6.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per V.M. KANADE, J.)

1. Petitioner is challenging the order passed by the Minister for State (Revenue) dated 27/08/2004 in proceedings No. LPO 34/2003/748/Matter No.90/A-3, Revenue & Forest Department, Mantralaya. By the said order, the Minister of State (Revenue) deleted the land bearing No.1130 situated at Mouje Chikhali, Taluka Haveli, District Pune, which was acquired by the Government purportedly exercising power vested in him under section 48 of the Land Acquisition Act, 1894.

FACTS:

2. Petitioner is an authority which is established for the purpose of setting up a new township in Pimpri Chinchwad area by virtue of notification issued by the Government under section 113(2) of the Maharashtra Regional Town Planning Act, 1966 (For short "M.R.T.P. Act"). The petitioner - authority was established in the year 1972. The acquisition proceedings were initiated by the Government for the benefit of the petitioner since 1972 and large tracts of land were sought to be acquired, admeasuring 2400 Hectares in the designated area which was declared by the Government covering about 10 villages in and around

Pimpri Chinchwad and Nigadi. In 1974, a draft development plan which was prepared under the provisions of the M.R.T.P. Act was submitted to the Government for obtaining its sanction and, accordingly, the plan was finally sanctioned on 08/09/1977.

3. The land bearing Gat No. 1130, admeasuring 2 Hectares situated at village Chikhali was notified for acquisition and, accordingly, a notification under section 4 was issued on 09/03/1970. Thereafter, notification under section 6 of the said Act was issued on 23/11/1972 and, finally, an award was passed on 13/08/1986 in respect of the said land. Thereafter, admittedly, on 09/09/1986, possession of the land was taken over by the Special Land Acquisition Officer, the respondent No.5 herein, who handed over the possession of the land to the petitioner - authority on the same day and since then the land is in possession of the petitioner - authority.

4. Thereafter, on 21/01/2004, respondent No.7 filed an application before the Government under section 48 of the Land Acquisition Act for deletion of the land from the acquisition. The petitioner - authority

filed their reply and it was pointed out to the concerned authority that the petitioner had already taken possession of the land in 1986 and that the land was already allotted by the petitioners to several allottees and, as such, the question of deletion of this land from the acquisition would not arise. Respondent No.3, however, by his order dated 27/08/2004 deleted the acquisition of the aforesaid land purportedly by exercising power vested in him under section 48(1) of the Land Acquisition Act. The petitioner is challenging the said order by invoking writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

5. We have perused the impugned order passed by the Minister for State (Revenue), Government of Maharashtra as also the affidavit in reply which is filed by the Government. In the affidavit in reply, it is categorically admitted that the award in respect of the land was declared on 13/08/1986 and possession of the land was taken on 09/09/1986 and the possession was handed over to the petitioner - authority on the same day. In the said affidavit, panchanama which is annexed as Exhibit-B to the Petition is not disputed. Further, it is stated that by virtue of Mutation Entry No. 993 which was certified on 10/09/1986, the name

of the petitioner was entered in the 7 x 12 Extract. A xerox copy of the Mutation Entry is annexed at Exhibit-1 to the affidavit-in-reply filed by the Government in which it is clearly stated that the possession of the land was taken in the presence of panchas and the panchanama also was prepared in their presence in respect of handing over possession of the land to the petitioner - authority. Further, in the said affidavit, it is stated that the owners of the land were paid compensation on 06/02/2004 as calculated by the Special Land Acquisition Officer and a copy of the bill of payment is annexed at Exhibit-2. Thus, it is an undisputed position that the land in question was already acquired in 1986, after the award was passed and the possession was taken and it was handed over to the petitioner - authority. The land, therefore, vested in the petitioner - authority after the award was passed and possession was handed over to them.

6. It would be relevant to consider provisions of section 48 of the Land Acquisition Act. Section 48 reads as under:-

> "**48. Completition of acquisition not compulsory, but compensation to be awarded when not completed.**- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the

> acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together, with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
>
> (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

7. From the perusal of the said section, it will be clear that the Government does have discretion to delete any land from the acquisition proceedings as long as the possession of the land is not taken over by the acquiring authority or is handed over to the concerned authority for whose benefit the land has to be acquired. In the present case, it is an admitted position that the possession of the land was taken over by acquiring authority on 09/09/1986 and, therefore, after the said date, it was not open for the Government to delete the land from the acquisition proceedings.

8. It is a well settled position in law that the manner of taking possession by panchanama has been accepted as the standard mode in which the possession

is taken and the Supreme Court has, in number of cases, laid down that this is a normal mode of taking possession by drafting a pachanama in the presence of panchas. Further, the provisions of section 16 of the said Act also clearly lay down that once the award is passed and the possession of the land is taken, the land vests in the Government absolutely and merely because notice as envisaged under section 45 has not been served, it does not prevent the vesting of the property in the Government. In our view, therefore, the impugned order passed by the Minister is patently illegal and he has exercised jurisdiction which is not vested in him by law. It was not open for respondent No. 2 to consider whether notice was served in the manner provided under section 45 or not after the entire acquisition proceedings had been completed and the possession had been taken over by the acquiring authority.

9. It must be also noted here that in the affidavit in reply which is filed on behalf of the Government, the Special Land Acquisition Officer Nayana Bondarde has not controverted the factual averments which are made in the Petition and has also not given any justification for the order passed by the respondent No.2.

10. In the result, we have no hesitation in holding that the impugned order passed by respondent No.2 dated 27/08/2004 annexed at Exhibit-G to the Petition, is clearly illegal. The said impugned order is, therefore, quashed and set aside.

11. Petition is allowed in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)